* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on February 28,2007
Delivered on March 05,2007

\+ CRL.REV.P. 847-848/2006

VIJAY KUMAR & ANOTHER ..... Petitioners
Through: Mr. K.K. Sareen, Advocate
versus

(STATE OF NCT OF DELHI) ..... Respondent
Through Mr. Pawan Sharma, Advocate

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mr.Justice S.Ravindra Bhat

1. In these revision proceedings under Section 397 of the Code of Criminal Procedure, the petitioner challenges an order of the order on charge and dated the 4th of November 2006 by the Additional Sessions Judge (hereafter referred to as "the trial court"). The Court charged the petitioner with causing injuries to one Om Prakash amounting to offence under Sections 308 read with 34 of the Indian Penal Code and also causing loss and damage to be punishable under Section 427.

2. Briefly the facts are that according to the allegations in the FIR the petitioner, a shopkeeper owning premises adjacent to that of the alleged victim Om Prakash had an

altercation with him which resulted in a scuffle. It was alleged that during the course of the incident the petitioner hurled a brick over the victim, which hit Om Prakash on the head. The petitioner's employee one Naveen allegedly joined him in the brawl; it was also alleged that both of them overpowered the victim and assaulted him severely.

3. The petitioner had approached this Court on an earlier occasion claiming to be aggrieved by the previous order of the trial Court. The Court had allowed that revision principally on the ground that a document which had not formed part of the Chalan, ought not to have been considered by the trial Court at the time of the order on charge. This was on the footing that the reliance placed upon two letters were not correct.

4. It is contended by Mr K. K. Sareen, Learned counsel that the trial Court misdirected itself in issuing the impugned order on charge. He placed strong reliance on the circumstance that the earliest medical report indicated that the injuries were simple in nature and were caused by a blunt instrument. This was on the basis of the certificate issued by the Ram Manohar Lohia Hospital contemporaneously. That document had described the injuries as a cut of the length of 4 cm and with a depth of 1 cm on the left temporal region and another injury on the jaw, with tenderness over the chest. The report indicated that though the patient was conscious, he was slightly disoriented and irritable.

5. The Learned Counsel contended that the altercation had resulted injuries upon the person of the petitioner accused which were intentionally not recorded by the police even though they

visited the spot at that time. He placed reliance upon another order of this Court by which the injuries inflicted upon the person of the petitioner were directed to be treated as grave enough to warrant the charge under Section 307 in the alternative. It was submitted that these clearly indicated the partisan role of the prosecution and the unfairness in the investigation, which was bent upon vilifying the petitioner and suppressing the nature of the incident which included grave injuries upon his person.

6. Learned Counsel submitted that the trial Court committed error in not properly examining the medical report dated 23 November, 1995 which in no way indicated that the complainant had fallen unconscious or that he had a history of vomiting. Therefore, the inference which led to the charge of Section 308, was completely groundless.

7. Counsel contended that the trial Court committed an error in presuming that there was common intention to commit the offences. That Court itself was of the view that the quarrel ensured over a petty matter namely a parking dispute. It was contended that the only role alleged against the second accused was of his catching hold of and giving slaps and blows to the complainant victim. Counsel contended that the statements recorded before the police, under section 161 nowhere indicated that the petitioner exhorted or dictated the other; nor was any action by him showing intention to commit culpable homicide. It was contended that are in blunt object, simple injury cannot lead to a charge under section 308 IPC.

8. Counsel relied on judgments, say that where the injuries upon the person of the accused

are not sufficiently explained, the charge become suspect (Ref *Balwant Singh -vs- The State* 1998 (III) AD (Del) 459; *Vijayee Singh -vs- State of UP* 1990 (3) SCC 190. It was also contended that a mere head injury could not justify a charge under Section 308 (Ref. *Surinder Kumar -vs- State* 1997 JCC 45; *State -vs- Yad Ram* 2006 (3) JCC 1916 and *Shiv Singh -vs- State* 24 (1993) DLT 158.

9. Learned Counsel for the State opposed the petition. He contended that besides the medical report which is a part of a record, the Court also took into consideration the circumstances which indicated that the nature of the attack upon the complainant victim was sufficiently serious to warrant framing of charges under Section 308. The statements of persons who witnessed the incident testify that the victim was belaboured and beaten up. They all indicated that he lost his consciousness and had to be removed to the hospital and was profusely bleeding at the time.

10. The trial Court in its order has stated as follows:

> *"8. As to whether there was intention on the part of the accused persons to attack on the lives of the victim? For an answer, the facts of the present controversy as well as the opinion evidence prove to be a guide. Om Prakash unfolds that he sustained injuries over his head, face and chest. He announces that he became unconscious at the spot too. Facts presented by the witness get reaffirmation and through events detailed in his MLC. Dr. Vinod Rastogi records that there was a history of vomitting and loss of consciousness when patient Om Prakash was brought before him. As he noted that there were CLW of dimension of 4cm x 1cm on left side of temporal region. Another CLW of dimension of 3.5 CM x 4 cm in jaw, over chin was noted. Tenderness over chest was also complained to him by the victim. Therefore the facts detailed in MLC are suggestive that there were two injuries on the person of the victim, besides tenderness over his chest. These injuries were caused by blunt object and patient was kept under observation. History of loss of consciousness is suggestive that the injury on parietal region was caused with force. However, injuries were opined to be simple in nature. Yet it is evident that at the spot victim vomitted and lost consciousness. More than one injury with blunt*

object is suggestive that Vijay Kumar had assaulted the victim more than once.

9. Intention is man's state of mind, direct evidence thereof except through his own confession cannot be had and apart from confession it can be proved by circumstantial evidence. In other words it is a matter of inference from all circumstances of a case such as motive, preparations made, declarations of the offender, weapon of offence used, number of blows given, part of the body selected, and nature of injuries actually inflected. As emerged out of the record Vijay Kumar was not ready to wait even for two minutes for removal of car of Om Prakash Gupta. He damaged his car by hurling brick over it. When Om Prakash Gupta raised objection to such misconduct, he was assaulted by Vijay Kumar and his servant. These facts are suggestive that Vijay Kumar was bent upon to raise an altercation and to teach his victim a lesson. He used brick as weapon of offence. If a brick is wielded over a vital part of the body likelihood of its proving lethal cannot be ruled out. Injuries were caused on parietal region as well as chin of the victim. More than one blow were given to the victim. All these circumstances are sufficient to form a prima facie view that Vijay Kumar and Navin Kumar had an intention to attempt on the life of the victim."

11. The above facts show that the principal allegations against the petitioners are that they caused injuries on the left temporal region of the victim, as well as on his jaw; besides the victim complained tenderness on his chest. While the counsel may be justified in saying that no material in support of the observation that the patient vomitted exists, yet that he was bleeding, and had also apparently lost consciousness, emerges from the record. Courts have no doubt held that a head injury *per se* may not be indicative of intention to cause injury that would be an offence under Section 308. What is material, at the charge framing stage, is to see the nature of the injury; its intensity, attendant circumstances, etc. The injury over the head, bleeding, loss of consiousness, and the narrative of the witness who stated that the victim lost consiousness, are indicative of a serious attack. That the injury was caused by a “blunt” weapon, is not the whole truth- it was a brick. In view of these, I am of the considered opinion that the view taken by the trial court as to the injuries cannot be faulted.

12. The next question is whether the petitioner's complaint about the trial Court overlooking

injuries on the person of the first petitioner, at this stage, fatally undermines the order on charge.The trial Court has cited some authorities in support of the view that the prosecution's failure to furnish explanation does not falsify its case. *Hare Krishna Singh-vs- Ram Kumar Upadhyaya* AIR 1988 SC 863; *Ramlagan Singh -vs- State of Bihar* AIR 1972 SC 2593; *Bhagwan -vs- State of Maharastra* AIR 1974 SC 21, to cite a few authorities have held that there is no such hard and fast rule, and that the prosecution story about commission of an offence has to depend on whether it can prove its allegations beyond reasonable doubt. Therefore, I am satisfied that the impugned order does not disclose any infirmity in this regard.

13. In view of the above conclusions, the petition has to necessarily fail; it is accordingly dismissed, without any order as to costs.

March 05, 2007

(S. RAVINDRA BHAT)
JUDGE